

IN THE COURT OF APPEALS OF TENNESSEE  
AT JACKSON  
May 16, 2000 Session

**CENTRAL STATE BANK v. LEO DICKERSON AND LOYD BATEMAN**

**An Appeal from the Chancery Court for Madison County**  
**Nos. 52557 and 52558      Joe C. Morris, Chancellor**

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**No. W1999-00503-COA-R3-CV - Filed April 25, 2001**

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This case involves a tax sale of real property. The bank loaned money secured by two separate parcels of land. The bank failed to record its interest in the property in the tax assessor's office as required by the pre-1996 version of Tennessee Code Annotated § 67-5-2502. The landowners failed to pay the property taxes. A tax sale was then held and the parcels of land were purchased separately by the defendants. Notice of the impending sale was placed in newspaper, but no other notice was given to the bank. The bank asserted that it learned of the tax sale after the redemption period had expired, when it attempted to institute foreclosure proceedings on the property. The bank filed suit seeking to set aside the sale, alleging inadequate notice. The trial court found that the sale had been properly conducted and that the defendants' deeds were valid. The bank appealed. We reverse and remand, finding that due process required that the bank be given actual notice prior to the tax sale.

**Tenn. R. App. P. 3 as of Right; Judgment of the Chancery Court is Reversed and Remanded.**

HOLLY KIRBY LILLARD, J., delivered the opinion of the court, in which W. FRANK CRAWFORD, P.J., W.S., and ALAN E. HIGHERS, J., joined.

David A. Riddick, Jackson, Tennessee, for the appellant, Central State Bank.

John Van Den Bosch, Jr., Jackson, Tennessee, for the appellees Leo Dickerson and Loyd Bateman.

**OPINION**

This case involves a tax sale of real property. Plaintiff/Appellant Central State Bank ("Bank") loaned money to James and Patricia Carey. The loans were secured by two separate parcels of real property in Jackson, Tennessee. The Bank properly executed and recorded a deed of

trust on both parcels, but failed to record its interest in the parcels of land with the Tax Assessor's Office, as required by the pre-1996 version of Tennessee Code Annotated § 67-5-2502.<sup>1</sup>

The Careys failed to pay the property taxes on the properties. Consequently, the Madison Chancery Court conducted a tax sale in September 1995. Notice of the tax sale was published in the newspaper, but no other notice of the impending sale was sent to the Bank. Defendant/Appellees Leo Dickerson and Loyd Bateman (collectively "the purchasers") each purchased a parcel of the affected land. On October 17, 1995, the tax sale was confirmed.

The Careys also defaulted on their loans from the Bank. Consequently, the Bank instituted foreclosure proceedings on the secured parcels of land. The Bank discovered that the purchasers claimed title to the property by virtue of the tax sale. By this time, the redemption period had expired. The Bank then filed suit against both of the purchasers to set aside the tax sale of the property, asserting that it had not received adequate advance notice of the sale.

The trial court consolidated the two cases and held a hearing on the matter in July 1999. The question at trial was whether the Bank was properly and adequately notified of the tax sale or its right to redeem after the sale, in accordance with the statute. The parties stipulated to most of the facts. The stipulated facts included the fact that the Bank failed to record its interest with the tax assessor's office; that the county attorney, trustee, and clerk "did all things requisite and proper" in their respective offices; that there was no personal service of notice of the impending sale to the Bank; and that notice of the impending sale was given by publication. In addition, the county attorney at the time of the sale testified by deposition that, three months prior to the end of the redemption period but several months after the sale, he sent a letter to the Bank advising it that the period for redemption of the properties would soon run. The Bank denied receiving this letter.

After the hearing, the trial court found that the tax sale had been conducted in accordance with the statute and that the Bank had received adequate notice of the sale by publication.

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<sup>1</sup>The pre-1996 version of the statute provided that to receive notice in the event of a tax sale, a party claiming a non-possessory interest in a property must have registered its interest with the tax assessor's office during the month of December:

(c) (1) Any person claiming an interest in taxable real property who is not in possession of that property shall be deemed to have waived any right to notice. . . unless such person shall file a statement declaring such interest with the assessor of property. . . .

(3) Any person claiming an interest and not waiving right to notice provided by . . . this section shall file the statement required by this subsection annually between December 1 and December 31.

*See* Tenn. Code. Ann. § 67-5-2502 (1994). The statute was amended in 1996 to require the delinquent tax attorney to conduct a reasonable search of the public records and give notice of an impending sale to anyone identified as having an interest in the property. *See* Tenn. Code Ann. § 67-5-2502(c) (1996).

Accordingly, the trial court held that the Bank was not entitled to set aside the tax sale. From this order, the Bank now appeals.

On appeal, the Bank argues that as an entity holding an interest in the property, due process required that it receive personal service or service by mail of the impending sale before its interest in the property could be extinguished. The purchasers contend that the tax sale was valid and note that the Bank failed to record its interest with the tax assessor's office as required under the pre-1996 version of the statute. In addition, the purchasers point out that, prior to the end of the redemption period, the county attorney sent the Bank a letter informing it that the tax sale had taken place.

Our review of this case is *de novo* upon the record with a presumption of correctness in the trial court's findings of fact. *See* Tenn. R. App. P. 13(d). The trial court's conclusions of law are reviewed *de novo* with no presumption of correctness. *See Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

In support of its argument on appeal, the Bank cites the United States Supreme Court's opinion in *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 103 S. Ct. 2706 (1983) and this Court's opinion in *Sunburst Bank v. Patterson*, 971 S.W.2d 1 (Tenn. Ct. App. 1997), *perm. to appeal denied* Jan. 20, 1998. In *Mennonite*, the Court held that an Indiana tax sale statute, which did not provide for personal service or service by mail to the mortgagee of the property prior to the tax sale violated the due process requirements of the 14<sup>th</sup> Amendment of the United States Constitution. *See* 462 U.S. at 800, 103 S. Ct. at 2712. The Court held that "a mortgagee possesses a substantial property interest that is significantly affected by a tax sale"; and therefore, he is entitled to "notice reasonably calculated to apprise him of a pending tax sale." *Id.* at 798, 103 S. Ct. at 2711. The Court asserted:

When the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service. But unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the [actual notice] mandate of *Mullane [v. Central Hanover Bank & Trust Co.]*, 339 U.S. 306, 70 S. Ct. 652 (1950)].

*Mennonite* was discussed in this Court's opinion in *Sunburst v. Patterson*. *Sunburst*, 971 S.W.2d at 4-5. In *Sunburst*, the trust and warranty deeds directed that tax bills be sent to the mortgage holder, Sunburst Bank, whose address was provided on both deeds. However, Sunburst Bank failed to file the required form declaring a non-possessory interest in the affected piece of property, as required by the pre-1996 version of Tennessee Code Annotated § 67-5-2502. Tax notices were sent to the property address, rather than to Sunburst Bank as requested on the property deeds. *Id.* at 4. Notice of the tax sale was given by publication only. *Id.* at 2. Relying on *Mennonite*, this Court held that notice by publication was insufficient and violated Sunburst Bank's right to due process. Since Sunburst Bank's identity and address were reasonably ascertainable, actual notice of the impending sale was required. *Id.* at 5; *see also Freeman v. City of Kingsport*,

926 S.W.2d 247, 249-50 (Tenn. Ct. App. 1996) (“actual notice is required if the interested party’s name and address are readily ascertainable”); *Morrow v. Bobbitt*, 943 S.W.2d 384 (Tenn. Ct. App. 1996).

The purchasers argue that *Sunburst* can be distinguished from this case. In *Sunburst*, there was evidence that the defendants had actual knowledge of Sunburst Bank’s interest in the property because the defendants had the deeds in their possession before the tax sale. *See Sunburst*, 971 S.W.2d at 5. While this fact supported the holding in *Sunburst*, we find that it is not necessary for the defendants to have actual notice of the Bank’s interest to require them to send the Bank actual notice of the impending tax sale. When the identity of the mortgagee is included in a publicly recorded mortgage and may be reasonably ascertained, notice by publication is insufficient and must be supplemented by notice by mail or service. *Mennonite*, 462 U.S. at 798, 103 S. Ct. at 2711; *Sunburst*, 971 S.W.2d at 5. In this case, it is undisputed that the Bank’s name and address was located on the trust deeds of both properties. It is also undisputed that these deeds were publicly recorded and correctly filed with their respective titles in the Madison County Register’s office. Thus, the name and address of the Bank was readily ascertainable. Although a governmental body is not required to undertake extraordinary measures to determine the name and address of a mortgagee not in the public record, if through reasonable diligence the mortgagee can be identified, actual notice is required. *Mennonite*, 462 U.S. at 798 n. 4, 103 S. Ct. at 2711 n. 4. Therefore, the Bank was entitled to notice of the impending sale “by mail or other means as certain to ensure actual notice.” *See id* at 800, 103 S. Ct. at 2712.

The purchaser notes the testimony of the county attorney that the Bank, prior to the end of the redemption period, was sent a letter informing them that the tax sale had taken place. This does not affect the obligation to send the Bank actual notice prior to the tax sale. Therefore, the cause must be reversed and remanded for further proceedings consistent with this Opinion, including but not limited to proceedings to determine whether any interest may be due the purchasers pursuant to Tennessee Code Annotated § 67-5-2504.

The decision of the trial court is reversed, and the cause is remanded for further proceedings consistent with this Opinion, as set forth above. Costs are taxed to the appellees, Leo Dickerson and Loyd Bateman and their surety, for which execution may issue if necessary.

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HOLLY K. LILLARD, JUDGE